SARABJIT SINGH

v.

TAMIL MALAR SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[CODE NO. D4-42-528-88]
2 JUNE 1989

COMPANY LAW: *Winding up - Petitioner obtained final judgment against the company - Petition based on insolvency - Judgment sum for RM130,000 assets of the company valued at RM1,200,000 request for a three month adjournment to sell assets of the company - Names of prospective purchasers not stated - Excuse to delay - Section 218(1)(e) Companies Act 1965.*

In this petition, the petitioner was seeking on order that the respondent, Tamil Malar Sdn. Bhd. be wound-up on the ground of insolvency under the provisions of the Companies Act 1965.

The petitioner obtained final judgment for RM130,000 against the respondent company in civil suit no. C3-23-3087-86. The respondent company neglected to satisfy the judgment.

On the delay of hearing of the petition, the respondent company averred that it had assets valued at RM1,200,000 and requested for a three months adjournment to sell its assets and goodwill, and pay its debt to the petitioner. The question for the consideration of the Court was whether the petitioner was entitled to a winding-up order.

Held:

[1] The proposal sale of the respondent's assets was only an excuse to delay the proceedings and the Court was not convinced of the genuineness of the proposed sale.

[2] It is clear that the respondent insolvent and unable to pay its debt.

[3] There is no evidence of other creditors opposing the petition.

[4] In the circumstances, the petitioner is entitled to a winding-up order *ex debito justitiae* under s. 218(1)(e) of the Companies Act 1965.

[Order Accordingly.]

Legislation referred to:
Companies Act 1965, s. 218(1)(e)

Other sources referred to:
Australian Company Law by Palerson & Ednie, 2nd Edn., Vol. 2.,
Palmer's Company Law, 23rd. Edn. Vol. 1,

For the respondent - S. Jordan; M/s. Adam & Company
For the petitioner - Saidah; M/s. Skrine & Co.

JUDGMENT

Zakaria Yatim J:

In this petition the petitioner is seeking the order of the Court (1) that the respondent, Tamil Malar Sdn. Berhad be wound-up by the Court under the provisions of the Companies Act 1965 (2) that the official receiver be appointed as provisional liquidator of the respondent; and (3) costs.

The respondent is a company incorporated on 29 January 1977 under the laws of Malaysia as a company limited by shares. On 12 May 1988 the petitioner obtained final judgment against the respondent in Kuala Lumpur High Court civil suit no. C3-23-3078-86 in the sum of RM130,000 together with interest thereon at the rate of 8% per annum from 16 August 1985 to the date of final payment and costs. On 1 July 1988 the petitioner, through his solicitors served a letter of demand dated 22 June 1988 on the respondent calling upon the respondent to make payment of the judgment sum together with interest and costs. Despite the demand the respondent had neglected to pay or satisfy the said sum or any part thereof or to make any offer to the petitioner to secure or compound thereof. According to the petitioner the respondent is insolvent and unable to pay its debts.

On the date of the hearing of the petitioner, Mr. S. Jordan, Counsel for the respondent referred to the affidavit of Mr. Nagarajan, the director of the respondent company affirmed on 14 February 1988. The affidavit *inter alia* stated that the current market value of the respondent real assets in the form of properties and equipment was RM1,200,000. The properties and equipment however, were charged to the United Asian Bank Berhad. The respondent also averred that it had the benefit of a substantial amount of goodwill by way of the regular circulation of its newspaper.

Mr. Jordan asked the Court to adjourn the hearing of the petition for a period of three months to enable the respondent to sell its assets and goodwill and then pay its debt to the petitioner. With regard to the proposed sale of the assets, Mr. Nagarajah averred in the same affidavit as follows:

> I am authorised to proceed to sell the full shares of the respondent and have been in negotiation with certain politicians who are members and/or ex-members of the Malaysian Indian Congress for the sale thereof. I have been informed by the these politicians that due to the factional infighting currently taking place in the Malaysian Indian Congress they aspire to obtain control of a daily Tamil newspaper to enable them to put across to the Tamil reading masses the views of their faction. In line with these objectives they have displayed a very keen interest in acquiring the respondent and all the facilities that go with it.
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> I have been in negotiation with these politicians for a period of about one month and we have arrived at a figure of RM2,700 for the purpose of the sale. The politicians involved have informed me that they require a period of about three to four months in order to arrange the financing from their businessmen-backers.
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> The aforesaid sum of RM2,700 is to be paid by the purchasers paying the current shareholders of the respondent RM500,000 and the balance RM2,200,000 injected into the respondent to settle all its debts so that the current shareholders and directors can be released from all guarantees and liability of the respondent.

It will be noted that in Mr. Nagarajan's affidavit he did not mention any particular names or persons in the Malaysian Indian Congress with whom he had been negotiating for the sale of the respondent's assets. He merely referred them as "these politicians." There were no correspondence or agreement entered into pertaining to the sale or any other documents exhibited to the affidavit.

In my view the proposed sale of the respondent's assets was only an excuse to delay the proceeding. The Court was not convinced of the genuineness of the proposed sale and refused to grant the adjournment requested by Mr. Jordan.

The question for the consideration of the Court therefore is whether the petitioner is entitled to a winding-up order? There is evidence that there is a judgment debt. Mr. Jordan told the Court that the respondent did not dispute the amount outstanding as stated in the petition. It is clear that the respondent is insolvent and unable to pay its debt. The fact that the respondent has assets which it and when realised would exceed RM1 million does not disprove the respondent's insolvency. See *Australian Company Law* by Palerson & Ednie, Second Edn., Vol. 2., p. 2534. Finally there is no evidence of other creditors opposing the petition. In the circumstances the petitioner is entitled to a winding-up order *ex debito justitiae* under s. 218(1)(e) of the Companies Act. See *Palmer's Company Law*, 23rd. Edn. Vol. 1, pp. 1115 and 1116.

For the reasons stated above I order (1) that the respondent company be wound-up under the Companies Act; (2) that the official receiver be appointed as provisional liquidator of the respondent company and (3) that the petitioner is allowed cost of and incidental to the winding-up to be taxed by the proper office of the Court and paid by the liquidator out of assets of the respondent.

Also found at [1989] 2 CLJ 1266